

No. 83-1130

Office - Supreme Court, U.S.

FILED

FEB 4 1984

IN THE

Supreme Court of the United States

ALEXANDER L. STEVAS.

CLERK

OCTOBER TERM, 1983

GERALD D. BAIR, DIRECTOR OF REVENUE OF THE IOWA DEPARTMENT OF REVENUE; IOWA DEPARTMENT OF REVENUE; IOWA RAILWAY FINANCE AUTHORITY; MAURICE E. BARINGER, TREASURER OF IOWA AND CUSTODIAN OF THE SPECIAL RAILROAD FACILITY FUND; RAYMOND L. KASSEL, DIRECTOR OF TRANSPORTATION OF THE STATE DEPARTMENT OF TRANSPORTATION; STATE TRANSPORTATION COMMISSION OF THE STATE DEPARTMENT OF TRANSPORTATION; AND STATE DEPARTMENT OF TRANSPORTATION,

Petitioners,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; BURLINGTON NORTHERN RAILROAD COMPANY; CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY; ILLINOIS CENTRAL GULF RAILROAD COMPANY; NORFOLK AND WESTERN RAILROAD COMPANY; RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR; and UNION PACIFIC RAILROAD COMPANY,

Respondents,

IOWA RAIL SHIPPERS ASSOCIATION,

Intervenor-Respondent.

*On Petition For Writ of Certiorari
to the Supreme Court of Iowa*

**BRIEF OF RESPONDENTS IN OPPOSITION
TO PETITION FOR CERTIORARI**

SHELDON I. FINK
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8107

*Counsel of Record for
Respondents*

Of Counsel:

WILLIAM T. BARKER
SONNENSCHN E CARLIN
NATH & ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000

B. A. WEBSTER

GAMBLE, RIEPE, BURT, WEBSTER & DAVIS
2600 Ruan Center
Des Moines, Iowa 50309
(515) 243-6251

QUESTION PRESENTED FOR REVIEW

Congress, in Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (now codified as 49 U.S.C. § 11503), prohibited any State from engaging in discriminatory taxation of property owned by an interstate railroad or from imposing any other tax which results in discriminatory treatment of an interstate railroad, declaring any such action to constitute an undue burden on interstate commerce. In 1981, the Iowa General Assembly enacted a special excise tax on railroads measured by the amount of fuel consumed to propel railway vehicles in Iowa. 1981 Iowa Acts ch.3, § 29. On the basis of its analysis of the Iowa tax structure as applied to the taxation of the consumption of fuel by railroads and other modes of transportation, the Supreme Court of Iowa determined that the Iowa railroad fuel tax resulted in discriminatory treatment by Iowa of Respondent railroads and therefore was in violation of, and prohibited by, 49 U.S.C. § 11503.

The question presented for review is:

Whether the Supreme Court of Iowa correctly decided that the Iowa railroad fuel consumption tax would result in discriminatory treatment of interstate railroads and therefore is prohibited by 49 U.S.C. § 11503(b)(4).

LIST OF PARTIES TO THIS PROCEEDING

Respondents are listed in the caption. The parents, subsidiaries (other than wholly-owned subsidiaries) and affiliates of Respondents are numerous and are listed in Appendix I.

TABLE OF CONTENTS

	<u>PAGE</u>
Question Presented for Review	i
List of Parties to This Proceeding	ii
Table of Authorities	iv
Opinion Below	1
Jurisdiction	2
Statutory Provisions Involved	2
Statement of the Case	3
Background of the Case	3
United States District Court Proceedings	4
Iowa District Court Decision	5
Iowa Supreme Court Decision	6
Reasons for Denying the Writ	7
I. The Decision of the Iowa Supreme Court Correctly Construes and Applies Section 306(1)(d) of the 4-B Act and Does Not Conflict with Any Decision of This Court or of Any Court of Appeals or Other State Supreme Court	7
II. This Case Does Not Involve Any Significant Interpretation of Federal Law or Any Important Question of Broad Applicability	12
Conclusion	16
Appendix I	1a

TABLE OF AUTHORITIES

Cases

	PAGE
<i>Alabama Great Southern R.R. v. Eagerton</i> , 663 F.2d 1036 (11th Cir. 1981), <i>on remand</i> , 541 F.Supp. 1084 (M.D. Ala. 1982)	2, 5, 8, 10, 13
<i>Arizona v. Atchison, Topeka & Santa Fe Ry. Co.</i> , 656 F.2d 398 (9th Cir. 1981)	10
<i>Arizona Public Service Co. v. Snead</i> , 441 U.S. 141 (1979)	10
<i>Atchison, Topeka & Santa Fe Ry. Co. v. Bair</i> , 535 F.Supp. 68 (S.D. Iowa 1982)	5, 9
<i>Brotherhood of Railroad Trainmen v. Baltimore & Ohio R.R.</i> , 331 U.S. 519 (1947)	9
<i>Complete Auto Transit, Inc. v. Brady</i> , 430 U.S. 274 (1977)	15
<i>Gordon v. Appeal Tax Court</i> , 44 U.S. (3 How.) 133 (1845)	8
<i>Greenough v. Tax Assessor</i> , 331 U.S. 486 (1947)	10
<i>Gurley v. Rhoden</i> , 421 U.S. 200 (1975)	12
<i>Harrison v. PPG Industries, Inc.</i> , 446 U.S. 578 (1980)	9
<i>Helson v. Kentucky</i> , 279 U.S. 245 (1929)	15
<i>Ogilvie v. State Board of Equalization</i> , 492 F.Supp. 446 (D.N.D. 1980), <i>aff'd</i> , 657 F.2d 204 (8th Cir.), <i>cert. denied</i> , 454 U.S. 1086 (1981)	8, 10, 13
<i>Rewis v. United States</i> , 401 U.S. 808 (1971)	9
<i>Trailer Train Co. v. State Board of Equalization</i> , 710 F.2d 468 (8th Cir. 1983)	8
<i>United States v. Bass</i> , 404 U.S. 336 (1971)	9
<i>United States v. Five Gambling Devices</i> , 346 U.S. 441 (1953)	9

Statutes

	PAGE
<i>Federal</i>	
Tax Anti-Injunction Act, 28 U.S.C. § 1341	4
Railroad Revitalization and Regulatory Reform Act of 1976, Public Law No. 94-210, 90 Stat. 54 (1976), Sec- tion 306 (now codified as 49 U.S.C. § 11503)	2
United States Supreme Court Rule 17	7, 16
<i>Iowa</i>	
1981 Iowa Acts ch.3, § 29	i
Iowa Code § 324A.3 (1983)	3
Iowa Code §§ 324A.1—9 (1983)	3
Iowa R. Civ. P. 4	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

GERALD D. BAIR, DIRECTOR OF REVENUE OF THE IOWA DEPARTMENT OF REVENUE; IOWA DEPARTMENT OF REVENUE; IOWA RAILWAY FINANCE AUTHORITY; MAURICE E. BARINGER, TREASURER OF IOWA AND CUSTODIAN OF THE SPECIAL RAILROAD FACILITY FUND; RAYMOND L. KASSEL, DIRECTOR OF TRANSPORTATION OF THE STATE DEPARTMENT OF TRANSPORTATION; STATE TRANSPORTATION COMMISSION OF THE STATE DEPARTMENT OF TRANSPORTATION; AND STATE DEPARTMENT OF TRANSPORTATION,

Petitioners,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; BURLINGTON NORTHERN RAILROAD COMPANY; CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY; ILLINOIS CENTRAL GULF RAILROAD COMPANY; NORFOLK AND WESTERN RAILROAD COMPANY; RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR; and UNION PACIFIC RAILROAD COMPANY,

Respondents,

IOWA RAIL SHIPPERS ASSOCIATION,

Intervenor-Respondent.

*On Petition For Writ of Certiorari
to the Supreme Court of Iowa*

**BRIEF OF RESPONDENTS IN OPPOSITION
TO PETITION FOR CERTIORARI**

OPINION BELOW

The opinion of the Supreme Court of Iowa is reported at *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 338 N.W. 2d 338 (Iowa 1983). (See App. 1-27.)¹

¹ "App." refers to the Appendix to the Petition for Certiorari. "Petition" refers to the Petition for Certiorari.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

STATUTORY PROVISIONS INVOLVED

The relevant provisions of Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law No. 94-210, 90 Stat. 54 (1976), now codified as 49 U.S.C. § 11503(b)(4),² are as follows:

Section 306. Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.), as amended by this Act, is further amended by inserting therein a new section 28 as follows:

Sec. 28. (1) Notwithstanding the provisions of section 202(b), any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

* * * *

(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

² Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 was codified in Public Law 95-473, 92 Stat. 1337 (October 13, 1978), as 49 U.S.C. Section 11503(b). While the language of Section 306 and the codified version thereof in Section 11503(b) are somewhat different, the codification was enacted merely to revise, codify and enact without substantive change the Interstate Commerce Act and related laws. See *Alabama Great Southern R.R. v. Eagerton*, 663 F.2d 1036, 1037 (11th Cir. 1981). Reference in this Brief will be made to Section 306.

The relevant provisions of Iowa Code § 324A.3 (1983) are as follows:

324A.3 Tax imposed. For the privilege of operating railway vehicles in this state, an excise tax is imposed at the rate of three cents per gallon beginning October 1, 1981 and is imposed at the rate of eight cents per gallon beginning July 1, 1982 upon the use of fuel for the propulsion of a railway vehicle within the state. . . .

STATEMENT OF THE CASE

Background of the Case

This action involves a request for declaratory and injunctive relief by the interstate railroads which presently operate in Iowa, seeking to have the special excise tax imposed on railroad companies under Iowa Code §§ 324A.1-.9 (1983) declared unlawful as being prohibited by Section 306(1)(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act").

Congress enacted the 4-R Act in 1976 in response to the deteriorating financial condition of the interstate railroads. Among the provisions designed to competitively and economically assist the railroads, Section 306 of the 4-R Act dealt with the problem of discriminatory state taxation of railroads. In Section 306, Congress declared it to be an unreasonable and unjust discrimination against, and undue burden on, interstate commerce for any State to tax railroad property in a discriminatory manner or to impose any other tax which results in discriminatory treatment of an interstate railroad.

In 1981, the State of Iowa enacted a special excise tax on railroads measured by the amount of diesel fuel consumed to propel railway vehicles in Iowa. Revenue from the tax was to be placed in a special railroad facility fund which was to be used to purchase or rehabilitate abandoned or

uneconomic railroad lines in Iowa and to place such lines back into competition with the taxed railroads. The special excise tax was imposed solely upon railroads and no identical or comparable fuel consumption tax is imposed by Iowa upon any other commercial or industrial taxpayer in Iowa, including taxpayers engaged in the business of conducting competing transportation services, such as trucks, barges and airlines.

United States District Court Proceedings

Confronted with the proposed implementation of the special excise tax on railroads, the Respondent railroads filed a complaint on September 22, 1981, in the United States District Court for the Southern District of Iowa seeking declaratory and injunctive relief on the alternative grounds that the tax was prohibited by Section 306 of the 4-R Act and also violated a variety of federal and Iowa constitutional provisions.

The Petitioners moved to dismiss such federal court action on the ground that such action was precluded by the federal Tax Anti-Injunction Act, 28 U.S.C. § 1341. The railroads contended that 28 U.S.C. § 1341 was not a bar to this action in the federal court by reason of the exception to Section 1341 carved out by Section 306(c) of the 4-R Act, which essentially provides that, notwithstanding Section 1341 of Title 28, a United States District Court has jurisdiction to prevent a violation of Section 306. The Petitioners countered by contending that Section 306 did not apply to the special excise tax in question because, in their view, Section 306 was limited to discriminatory *property* taxation, notwithstanding the provisions of Section 306(1)(d) which prohibit the imposition of *any other tax* which results in discriminatory treatment of interstate railroad carriers.

The United States District Court, on the authority of *Alabama Great Southern R.R. v. Eagerton*, 663 F.2d 1036 (11th Cir. 1981), held that the phrase "any other tax" contained in Section 306(1)(d) prohibits all forms of state taxation which result in discriminatory treatment of railroads and the provisions of Section 306 were not merely limited to discriminatory property taxes. Accordingly, the United States District Court denied the Petitioners' Motion to Dismiss and retained jurisdiction over the case, although, for the reasons described below, the District Court deferred further consideration of the case. See *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 535 F. Supp 68 (S.D. Iowa 1982).

Iowa District Court Decision

Confronted with the Petitioners' Motion to Dismiss based on the federal Tax Anti-Injunction Act, the Respondent railroads commenced an action in the Iowa District Court for Polk County on November 6, 1981, similarly seeking declaratory and injunctive relief to have the special Iowa excise tax on railroads declared unlawful under Section 306 of the 4-R Act and on a variety of other grounds based upon the United States and Iowa Constitutions. (App. 30-31, 39-40.) The Iowa District Court, on December 23, 1981, granted a temporary injunction against imposition of the tax. (App. 31-32.) On September 8, 1982, the Iowa District Court ruled that Section 306 of the 4-R Act was applicable to non-property taxes such as the Iowa excise tax on railroads (App. 48) but that, on the basis of its analysis of the Iowa and federal tax systems, such tax did not result in discriminatory treatment of railroads. (App. 48-59.) The Iowa District Court also rejected the railroads' constitutional arguments. (App. 59-103.)² The injunction was continued in force pending appeal.

² The Iowa District Court decision is printed in full at App. 30-110.

Iowa Supreme Court Decision

The railroads perfected a timely appeal to the Supreme Court of Iowa, which, on September 21, 1983, reversed the decision of the Iowa District Court.

The Iowa Supreme Court, on the basis of its analysis of Section 306 of the 4-R Act and of the taxing structure of the State of Iowa, concluded that the Iowa special excise tax on railroads violated Section 306(1)(d) of the 4-R Act and was therefore invalid. (App. 20.)⁴ The Iowa Supreme Court first rejected the Petitioners' contention that Section 306(1)(d) was limited in its scope to the prohibition of discriminatory property taxation and ruled that Section 306(1)(d) applied to discriminatory state excise taxes as well. (App. 10-15.) The Court then held that, in order to determine whether discrimination exists under Section 306(1)(d), it was necessary, in the context of a tax on the use of fuel to propel railway vehicles, to compare such Iowa taxation of railroads with the taxation by Iowa of the use of fuel by competing modes of transportation. (App. 15-16.) The Iowa Supreme Court also concluded that, in making such comparison, it was erroneous to consider the entire tax structure of the State of Iowa or to consider the impact of federal taxation on railroads and other modes of transportation. (App. 16.) The focus was therefore on the specific tax at issue and on other Iowa taxes comparable to it. The Iowa Supreme Court then analyzed the Iowa tax statutes which apply—or do not apply—to fuel consumed within the State of Iowa by the various competing modes of transportation. Based on such analysis of its own state tax statutes, the Iowa Supreme Court concluded that the Iowa railroad fuel consumption tax resulted in discriminatory treatment of railroads and therefore was prohibited by Section 306(1)(d) of the 4-R Act. (App. 16-20.)

⁴ Under Iowa procedural rules, the Iowa Supreme Court's review of all questions of fact and law in this case was *de novo*. Iowa R. Civ. P. 4.

REASONS FOR DENYING THE WRIT

This case does not present any of the relevant considerations governing review on certiorari as set forth in this Court's Rule 17. The decision of the Iowa Supreme Court does not conflict with any decision of any other state court of last resort or of any federal court of appeals. Indeed, the Iowa excise tax on railroad fuel consumption stands alone; no other state has enacted any similar tax and no other court has been required to rule upon the validity of any similar excise tax under Section 306(1)(J). Moreover, to the extent the federal courts have dealt with any of the subsidiary issues presented in this case involving Section 306, the decision of the Iowa Supreme Court is wholly consistent with such decisions.

Nor does the decision below merit review by this Court for any other reason. This case merely involves the determination by the Iowa Supreme Court that a unique state excise tax on the use of diesel fuel by railroads results in discriminatory treatment of railroads under Section 306(1)(d) when such tax is viewed within the context of the relevant Iowa tax structure. Such issue does not involve an important question of federal law of broad impact.

I. The Decision of the Iowa Supreme Court Correctly Construes and Applies Section 306(1)(d) of the 4-R Act and Does Not Conflict with Any Decision of This Court or of Any Court of Appeals or Other State Supreme Court.

The Iowa Supreme Court in this case was confronted with the narrow question of whether a unique state excise tax on railroads, considered in the context of Iowa's specific tax structure, resulted in discriminatory treatment of such railroads and was therefore prohibited by Section 306(1)(d) of the 4-R Act. In addressing this issue, the Iowa Supreme Court first considered, and properly rejected, the argument raised by the Petitioners that Section 306 was limited to

the prohibition of discriminatory state property taxes and did not encompass other forms of discriminatory state taxes, including state excise taxes. (App. 10-15.) Section 306(1)(d) clearly and unambiguously prohibits the imposition of "any other tax" which results in discriminatory treatment of an interstate rail carrier, and the Iowa Supreme Court held that such clear and unambiguous language means precisely what it says, i.e., that *any* form of discriminatory state taxation is governed by Section 306, by virtue of the provisions of Section 306(1)(d). As the Iowa Supreme Court correctly stated (App. 13), there is no uncertainty in the clear and unambiguous words "any other tax". The Iowa Supreme Court decision is based upon and fully supported by *Alabama Great Southern R.R. v. Eagerton*, 663 F.2d 1036 (11th Cir. 1981), *on remand*, 541 F. Supp. 1084 (M.D. Ala. 1982); *Ogilvie v. State Board of Equalization*, 492 F. Supp. 446 (D.N.D. 1980), *aff'd*, 657 F.2d 204 (8th Cir.) *cert. denied*, 454 U.S. 1086 (1981); and *Trailer Train Co. v. State Board of Equalization*, 710 F.2d 468, 472, n. 6 (8th Cir. 1983). The Iowa Supreme Court's statutory interpretation is also fully consistent with this Court's decision in *Gordon v. Appeal Tax Court*, 44 U.S. (3 How.) 133 (1845).

Moreover, the decision by the Iowa Supreme Court (and by each of the federal courts which have addressed this question) as to the scope of Section 306(1)(d) is eminently sensible and correct. Congress, in enacting Section 306 of the 4-R Act, was concerned with the impact upon the economic viability of the interstate railroad system of discriminatory state taxation of railroads, and Congress was obviously aware that discriminatory treatment need not be limited to property taxation, but could also be effected by a variety of other forms of discriminatory state taxation which might be enacted by imaginative state legislatures. Congress therefore added a broad "catch all" provision in Section 306, in the form of Section 306(1)(d), to the other more specific prohibitions against discriminatory property taxation.

The Petitioners essentially repeat their restrictive and unsupported view of Section 306 and seek to have this Court ignore the clear and unambiguous language of Section 306(1)(d). (Petition 5-7.) Petitioners have presented their limited construction of Section 306 at each level of the proceedings below, and that construction has been properly rejected by each court which has addressed it.⁵ In effect, Petitioners request this Court to ignore the elementary rule that, where statutory language is clear and unambiguous, it is unnecessary to look beyond the plain words of the statute. *Harrison v. PPG Industries, Inc.*, 446 U.S. 578 (1980); *Brotherhood of Trainmen v. Baltimore & Ohio R.R.*, 331 U.S. 519 (1947). And, as the Iowa Supreme Court (and every other court which has addressed this issue) stated (App. 13), there is no uncertainty in the clear and unambiguous words "any other tax" contained in Section 306(1)(d).

Petitioners also contend (Petition 6) that the Iowa Supreme Court's interpretation of Section 306(1)(d) ignores this Court's requirement that Congress enact a clear statement of its intent when a congressional enactment impinges on traditional state authority.⁶ However,

⁵ See *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, 535 F. Supp. 68 (S.D. Iowa 1982); *Atchison, Topeka & Santa Fe Ry. Co. v. Bair*, (Iowa District Court of Polk County), decided September 8, 1982 (App. 46-48).

⁶ Petitioners cite *United States v. Bass*, 404 U.S. 336, 349 (1971); *Rewis v. United States*, 401 U.S. 808, 812 (1971); and *United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953). Petitioners' reliance upon such cases is wholly misplaced. Such cases involved the interpretation of federal criminal statutes and merely reflect the position of this Court that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis v. United States*, *supra*, at 812. Such cases represent no more than this Court's view regarding the "sensitive relation between Federal and state criminal jurisdiction." *United States v. Bass*, *supra*, at 349.

Section 306(1)(d) does express, in the clearest terms imaginable, the decision of Congress to limit state authority by prohibiting, as an undue burden on interstate commerce, the imposition of any discriminatory tax on interstate railroads.⁷

After determining that Section 306(1)(d) applies to state excise taxes, the Iowa Supreme Court then addressed the question of whether the specific Iowa excise tax at issue resulted in discriminatory treatment of the Respondent railroads. (App. 15.) The Iowa Supreme Court preliminarily and correctly held, on the basis of consistently decided federal authority⁸ that such determination should not be based on consideration of the treatment of railroads and other taxpayers under the entire tax structure of the State of Iowa. The Iowa Supreme Court also preliminarily and correctly held, on the basis of this Court's analysis in *Arizona Public Service Co. v. Snead*, 441 U.S. 141 (1979), that the discriminatory effect of state taxation of railroads

⁷ Petitioners also contend that the Iowa Supreme Court determined that Section 306(1)(d) evidenced a Congressional intent to "invade and overturn" state excise taxation of rail carriers, which Petitioners, citing *Greenough v. Tax Assessor*, 331 U.S. 436, 490 (1947), assert is an area of traditional state authority vital to the existence of the states. (Petition 5-6.) Petitioners' assertion wholly ignores the elementary principle, expressed in *Greenough*, at 490, that the states' power to tax is subject to restrictions which emerge from the federal Constitution. Congress, acting under its undisputed constitutional authority to prohibit burdens on interstate commerce, determined that discriminatory state taxation constituted such a burden and therefore enacted Section 306, and the Iowa Supreme Court correctly decided that this was the clear intent and purpose of Congress. In this regard, Respondents note that Petitioners do not purport to challenge the constitutional validity of the Congressional prohibition against discriminatory state taxation set forth in Section 306(1)(d).

⁸ *Arizona v. Atchison, Topeka & Santa Fe Ry. Co.*, 654 F.2d 398 (9th Cir. 1981); *Alabama Great Southern R.R. v. Egerion*, *supra*; *Ogilvie v. State Board of Equalization*, *supra*.

should not include any analysis of the impact of federal taxation on railroads and other taxpayers. (App. 16.) The Iowa Supreme Court thus properly framed its analysis of the discriminatory impact of the particular state tax in question in terms of determining a relevant class of other comparable taxpayers and comparable taxes imposed—or, in this case, not imposed—by Iowa on such other taxpayers. Under the unique and limited circumstances of this case (which involves an excise tax on fuel consumed in the propulsion of railroad vehicles in Iowa), the Iowa Supreme Court then compared this tax with fuel consumption taxes imposed by Iowa on competing modes of transportation in Iowa.⁹ The Iowa Supreme Court then analyzed the relevant Iowa tax provisions and concluded that Iowa did not impose any comparable tax on competing modes of transportation and that the excise tax on railroads therefore was discriminatory. (App. 16-20)¹⁰ Certainly, the Iowa Supreme Court

⁹ Indeed, in their Brief in the Iowa Supreme Court (pp. 22 and 24), the Petitioners urged the Iowa Supreme Court to compare the fuel consumption tax on railroads with the taxation of "other [competing] transportation modes".

¹⁰ The Iowa Supreme Court specifically reviewed the Iowa taxation of fuel consumption by railroads, trucks, barges and aircraft. The Court found that the only tax which Iowa exacts regarding railroad fuel is the tax at issue in this case, and that barges (which constitute a substantial and competitive transportation mode) and aircraft are not required to pay any Iowa taxes on fuel consumption within Iowa. The Court also noted that while trucks superficially appear to pay a higher per gallon tax on fuel consumed in Iowa, the Iowa Constitution requires that Iowa taxes on truck fuel consumption be paid to an earmarked highway fund and thus merely represent the portion of the cost of the highways that the Iowa legislature deemed that the trucks should bear. In contrast, the Court found that railroads must acquire, construct, maintain and pay Iowa taxes on their own tracks and rights-of-way. The Iowa Supreme Court therefore found that, comparing state fuel taxation of railroads and trucks, the railroad tax in question results in discriminatory treatment of the railroads. (App. 16-20.)

is particularly well-qualified to interpret the taxing structure of the State of Iowa and its findings as to the incidence and effect of Iowa taxes are entitled to great weight; indeed, if, as here, the Iowa Supreme Court's findings are consistent with a reasonable interpretation of the Iowa statutes, this Court has indicated that such findings will be deemed conclusive. *Gurley v. Rhoden*, 421 U.S. 200, 208 (1975).

II. This Case Does Not Involve Any Significant Interpretation of Federal Law or Any Important Question of Broad Applicability

Petitioners paint this case as involving broad interpretations of Section 306(1)(d) which threaten the revenue systems of many states and the very foundation of federalism (Petition 6-7) and which assertedly impinge upon the ability of the states to impose "nondiscriminatory" taxes upon rail carriers for the purpose of promoting rail transportation within the states (Petition 8-9). The Petitioners thus attempt to cast this case as presenting important questions of federal law which should be settled by this Court. Petitioners' characterization of this case is so exaggerated as to be ludicrous.

The decision of the Iowa Supreme Court involves no more than an application of the clear and unambiguous anti-discrimination provisions of Section 306(1)(d) of the 4-R Act as applied to a unique¹¹ state excise tax which results in discriminatory treatment of railroads in the narrow context of the particular tax structure of the State of Iowa. This case does not in any manner threaten or impinge upon the rights or abilities of the states to impose reasonable and nondiscriminatory taxes.

¹¹ To the best of Respondents' knowledge, no state other than Iowa imposes an excise tax on the consumption of diesel fuel by railroads.

Moreover, Section 306(1)(d) is clearly a "catch-all" provision which encompasses a variety of present or potential forms of state taxation and thus Section 306(1)(d) essentially will have to be interpreted on a case-by-case basis depending upon the specific nature of the state tax in question and the peculiar tax structure of the particular state involved.¹² A decision by this Court with respect to the issue presented herein will not provide any broad or significant guidance and does not involve any important question of federal law.

Petitioners assert that the fact that the Iowa Supreme Court viewed the railroads as having been placed in a "competitive disadvantage" by the fuel excise tax as compared with other modes of transportation rises to the status of a "test" which has "far-reaching ramifications". (Petition 7.) Clearly, such determination by the Iowa Supreme Court does not have any such earth-shaking effect; indeed, in the context of the Iowa Supreme Court's analysis, the use of the phrase "competitive disadvantage" does no more than reflect the Court's determination that discrimination exists in a commercial sense.

Petitioners request advance legislative guidance from this Court as to the proper class of taxpayers with which

¹² Indeed, the other cases which thus far have involved the application of Section 306(1)(d) to particular state taxes reflect the variety and uniqueness of the discrimination issues to which Section 306(1)(d) is applied. In *Alabama Great Southern R.R. v. Egerton*, *supra*, the Court of Appeals for the Eleventh Circuit invalidated a discriminatory Alabama license tax and in *Ogilvie v. State Board of Equalization*, *supra*, the Court of Appeals for the Eighth Circuit invalidated a discriminatory North Dakota personal property ad valorem tax. This case, in turn, involves the first and only state excise tax on the consumption of diesel fuel by railroads. Each case involves not only a different type of tax, but the analysis of different state statutory and tax structures.

to compare rail carriers to determine if a particular form of state taxation is discriminatory under Section 306(1)(d). (Petition 7.) Section 306(1)(d) does not prescribe a specific comparison class because Congress intended to preclude, by enacting Section 306(1)(d), all forms of discriminatory state taxation and Congress could not predetermine every form of discriminatory taxation which might be enacted by imaginative state legislatures. Respondents respectfully suggest that this Court would similarly be hard put to provide any meaningful broad-based guidance as to specific comparison classes, at least until enough cases have arisen so that some pattern or general problems are discernable. Furthermore, this Court does not sit, as requested by Petitioners, for the purpose of providing advisory opinions to state legislatures with respect to narrow or unique forms of state taxes which they might some day wish to enact or to clarify congressional intent in the abstract.

Petitioners also assert (Petition 8) that the Iowa Supreme Court's interpretation of Section 306 will erode the ability of the states to enact non-discriminatory state taxes upon rail carriers to be expended for the promotion of rail transportation within the states. Such assertion totally misses the question presented in this case. The Respondent railroads do not challenge the right of the State of Iowa to impose reasonable and non-discriminatory taxes. Nor do the railroads, insofar as this case involves the application of Section 306(1)(d), contest or question the use of tax funds by the State of Iowa. The essence of this case, insofar as Section 306(1)(d) is concerned, is that Congress has forbidden the states from enacting any *discriminatory* state tax against railroads; the Respondent railroads' complaint herein is that the Iowa excise tax at issue is dis-

criminatory and thus prohibited by Section 306(1)(d), and the Iowa Supreme Court agreed. This is the sole and limited issue in this case at this point. The Petitioners' concern about the right of the State of Iowa to impose non-discriminatory taxes begs the question and is irrelevant.

Finally, the Petitioners ask this Court to resolve certain questions under the Commerce and Supremacy Clauses of the United States Constitution concerning the taxation of fuel. (Petition 9-10). The Respondent railroads respectfully submit that these constitutional issues are entirely premature and are not questions for review at this point. While the railroads presented certain federal constitutional questions as alternative issues before the Iowa Supreme Court, such Court, pursuant to elementary rules of appellate procedure, resolved this case on narrower statutory grounds, and expressly did not rule upon any of the constitutional issues raised by the Respondent railroads.¹² (App. 20.)

¹² Petitioners urge that review be granted for the purpose of expressly overruling *Helson v. Kentucky*, 279 U.S. 245 (1929), whose "vitality" Petitioners regard as "doubtful in light of this Court's landmark holding in *Complete Auto Transit, [Inc.] v. Brady*, 430 U.S. 474 (1977)." (Petition 9.) Respondents note that this Court's decision in *Complete Auto Transit, Inc.* has been applied in several decisions of this Court and Respondents respectfully submit that it is unnecessary for this Court to use this case as a vehicle to overrule *Helson*. Similarly, contrary to Petitioners urging (Petition 9-10), it is wholly unnecessary and, indeed, premature for this Court to use this case as a means of examining potential Supremacy Clause conflicts between "innovative" state-sponsored rail programs and the series of railroad regulatory reform acts adopted by Congress over the past several years.

CONCLUSION

The Petition does not present any ground for granting certiorari within Rule 17 of the Rules of this Court, and the Petition should therefore be denied.

Respectfully submitted,

SHELDON I. FINK
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8107
*Counsel of Record for
Respondents*

Of Counsel:
WILLIAM T. BARKER
SONNENSCHN EIN CARLIN
NATH & ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000

B. A. WEBSTER
GAMBLE, RIEPE, BURT,
WEBSTER & DAVIS
2600 Ruan Center
Des Moines, Iowa 50309
(515) 243-6251

Dated: February 2, 1984.

APPENDIX I

Pursuant To Rule 23.1 Of The Revised Rules Of The United States Supreme Court, A List Of Parent, Subsidiaries (Other Than Wholly Owned) And Affiliated Companies Of Each Respondent Is Set Forth Below:

The Atchison, Topeka and Santa Fe Railway Company is a wholly owned subsidiary of Santa Fe Industries, Inc. which in turn is the wholly owned subsidiary of Santa Fe Southern Pacific Corporation. Its subsidiaries which are not wholly owned are:

Alameda Belt Line
 The Belt Railway Company of Chicago
 Central California Traction Company
 The Denver Union Terminal Railway Company
 Houston Belt & Terminal Railway Company
 Joliet Union Depot Company
 Kansas City Terminal Railway Company
 The Oakland Terminal Railway
 Oklahoma City Junction Railway Company
 The Pueblo Union Depot and Railroad Company
 St. Joseph Terminal Railroad Company
 San Diego Pipeline Company
 Sunset Railway Company
 Texas City Terminal Railway Company
 Trailer Train Company
 The Wichita Union Terminal Railway Company

Its affiliates are:

Advertising Direction, Inc.
 The Alton & Southern Ry. Co.
 Arkansas & Memphis Railway Bridge and
 Terminal Company
 Asociadads Internacionales Des Pacifico
 The Atchison, Topeka and Santa Fe Railway Co.
 B & C General Agency, Inc.
 BLC Corporation
 BLFC Securities Corporation

Bankers Leasing and Financial Corporation
 Bankers Leasing Corporation
 Black Mesa Pipeline, Inc.
 Bravo Oil Company
 Canton Street Properties, Inc.
 Chula Vista Bayfront Investment Co.
 Clinton & Okla. Western Commeiro Leasing, Inc.
 Commonwealth Control, Inc.
 The Commonwealth Plan, Inc.
 The Commonwealth Plan of Puerto Rico, Inc.
 The Commonwealth System, Inc.
 Dallas Terminal Ry. and Union Depot Co.
 Dodge City and Cimarron Valley
 Evergreen Leasing Corporation
 Financial Leasing Corporation
 Fresno Interurban Railway Company
 Gallo Wash Coal Company
 Garden City Gulf & Northern Railroad Company
 Glascar, Inc.
 Golden Empire Investment Corporation
 Gulf Central Pipeline Co.
 Gulf Cent. Strg. & Terminal Co.
 Gulf Cent. Strg. & Term. Company of Neb.
 Gulf & Inter-State Railway Company of Texas
 Haystack Mt. Development Co.
 Louis Heller, Incorporated
 Holton Inter-Urban Railway Company
 Hospah Coal Company
 Kansas Southwestern Railway Company
 Kirby Forest Industries, Inc.
 Lease Capital, Inc.
 Los Alamos Constructors
 Los Angeles Junction
 Los Angeles Union Terminal, Inc.
 Main Street Warehouse Company
 Robert E. McKee, Inc.
 McKee Building Services, Inc.
 Mescalero Pipeline, Inc.
 The Midwest Commonwealth Plan, Inc.
 Northwestern Pacific Railroad Company
 One Market Street Properties, Inc.

Pacific Fruit Express Company
 Pacific Motor Transport Company
 Pacific Motor Trucking Company
 Pacific Petroleum Pipe Lines, Inc.
 The Pacific Plan, Inc.
 Petaluma and Santa Rosa Railroad Company
 Pintada Coal Company
 Rio Grande, El Paso and Santa Fe
 San Diego Pipeline Co.
 SF Coal Corp.
 S F Energy Co. of Indonesia
 S F M Nebraska, Inc.
 Santa Fe Energy Co.
 Santa Fe Energy Company of Seychelles, Inc.
 Santa Fe Energy Products Company
 Santa Fe Forwarding Co.
 Santa Fe Industrial Realty Co.
 Santa Fe Land Improvement Co.
 Santa Fe Leasing Corp.
 Santa Fe Mining, Inc.
 Santa Fe Natural Resources, Inc.
 Santa Fe Oil Company
 Santa Fe Pacific R.R. Co.
 Santa Fe Pipeline Co.
 Santa Fe Pipelines, Inc.
 Santa Fe Rail Equipment Co.
 Santa Fe Terminal Services, Inc.
 Santa Fe Towers Land Co.
 Santa Fe Trail Transp. Co.
 Santa Fe Transportation Co. (California)
 Security Guard Service, Inc.
 Sopac Finance N.Y.
 Southern Pacific Air Freight, Inc.
 Southern Pacific Company
 Southern Pacific Development Company
 Southern Pacific Equipment Company
 Southern Pacific Industrial Development Company
 Southern Pacific International, Inc.
 Southern Pacific Land Company
 Southern Pacific Marine Transport, Inc.

Southern Pacific Pipe Lines, Inc.
 Southern Pacific Telecommunications
 Processing Company
 Southern Pacific Transportation Company
 Southern Pacific Warehouse Company
 Southwest Pipeline Co.
 The Southwestern Town Lot Corp.
 Standard Office Building Corp.
 Star Lake Railroad Co.
 St. Louis Southwestern Ry. Co.
 St. Louis Southwestern Ry. Co. of Texas
 Sun Country Const. Co.
 Sunset Communications Company
 Sunset Insurance Company
 TICOR
 Transit Ice Company
 Visalia Electric Railroad
 Walker-Kurth Lumber Co.
 The Worcester Plan, Inc.
 The Zia Company

Burlington Northern Railroad Company is a wholly
 owned subsidiary of Burlington Northern Inc. Its sub-
 sidiaries which are not wholly owned are:

The Belt Railway Company of Chicago
 Camas Prairie Railroad Company
 Chicago Union Station Company
 Davenport, Rock Island and North Western Railway
 Company
 The Denver Union Terminal Railway Company
 Galveston Terminal Railway Company
 Houston Belt & Terminal Railway Company
 Iowa Transfer Railway Company
 Kansas City Terminal Railway Company
 Keokuk Union Depot Company
 The Lake Superior Terminal and Transfer Railway
 Company
 Longview Switching Company
 The Minnesota Transfer Railway Company

Paducah & Illinois Railroad Company
 Portland Terminal Railroad Company
 The Pueblo Union Depot and Railroad Company
 The Saint Paul Union Depot Company
 Terminal Railroad Association of St. Louis
 Trailer Train Company
 The Wichita Union Terminal Railway Company
 Winona Bridge Railway Company

Its affiliates are:

BN Financial Services Inc.
 Burlington Northern Airmotive Inc.
 Burlington Northern International Services Inc.
 Burlington Northern Trading Company Inc.
 Colt Intermodal Inc.
 Glacier Park Company
 Dreyer Bros., Inc.
 Glacier Park Boulder Company
 Glacier Park Denver Company
 Tennessee Glacier Park Company
 Washington Glacier Park Company
 Glacier Park Liquidating Company
 Meridian Land & Mineral Company
 Milestone Petroleum Inc.
 Butte Pipe Line Company
 Northern Rockies Pipe Line Co.
 Osage Milestone Petroleum Inc.
 Portal Pipe Line Company
 Saxony Corporation
 New Mexico and Arizona Land Company
 NZ Development Corporation
 NZ Properties, Inc.
 Plum Creek Timber Company, Inc.
 R-H Holdings Corporation
 The El Paso Company

Chicago and North Western Transportation Company has the following subsidiaries which are not wholly owned:

Iowa Transfer Railway Company
 Kansas City Terminal Railway Company

The Lake Superior Terminal and Transfer Company
 Railway Company of the State of Wisconsin
 The Minnesota Transfer Railway Company
 Peoria and Pekin Union Railway Company
 The Saint Paul Union Depot Company
 Trailer Train Company

Illinois Central Gulf Railroad Company is a wholly owned subsidiary of IC Industries, Inc. Its subsidiaries (other than wholly owned) and affiliates are:

A. B. Estrella
 Abex A/S
 Abex Corporation
 Abex Denison Limited
 Abex Finangaria, S.r.l.
 Abex Finanziaria
 Abex Fluid Power Limited
 Abex Ges. G.m.b.H.
 Abex G.m.b.H.
 Abex Industrial, S.A.
 Abex Industries, A.B.
 Abex Industries Ltd.
 Abex Industries, S.A.
 Abex International Holdings Limited
 Abex International, S.A.
 Abex Mead Limited
 Abex Paqid Equipment S.A.
 Abex Paqid Reibbelag G.m.b.H.
 Ac'cent International De Mexico, S.A. De C.V.
 Ac'cent International, Inc.
 ACR Maine, Inc.
 Almacenes Refrigerantes, S.A. De C.U.
 Alton Manufacturing Company
 American Brake Shoe Company
 American Refrigeration Products, S.A.
 Amsco Mexicana S.A.
 Atherton Silencers Limited
 Au Gourmet Foods De Luxe, Inc.
 Basingstake Foods Limited
 Belt Ry. Co.

Birmingham Exhaust Equipment Company Limited
 Black Diamond, Inc.
 Blanchard-Nus Limited
 Bolingbrook 55 Corp.
 Boston Bean Pot, Inc.
 Bridgewater Machine Company
 Bubble-Up Company, Inc.
 Buffalo Refrigerating Company, Inc.
 Butcher Boy Refrigerator Door Co.
 Centigon, Inc.
 Chandeysson Electric Company
 Chesley Industries, Inc.
 Colony Financial Corporation
 Compet Corporation
 Cobreq Cia. Brasileira de Equipamentos
 Cornish Cannery Limited
 Cosmic Enterprises, Inc.
 Cosmic Stores, Inc.
 Cove Development Corporation
 Covex S.r.L.
 Cutcher Canning Co., Inc.
 Cypress Bend Corporation
 Dad's Root Beer Company
 Denison Hydraulics Company, The
 Denison Hydraulics India Limited
 Denison Hydraulics, Japan Ltd.
 Diablitos Mexicanos, S.A.
 Diablitos Venegolanas, C.A.
 Do-Ray Lamp Co. Ltd.
 Environ of Inverrary, Inc.
 Exhaust Specialists Limited
 Frenco-Abex S.p.A.
 Fren-Do Sud S.p.A.
 Friend Brothers, Inc.
 Frolic Homes, Inc.
 Gas Welding, Inc.
 Genadco Advertising Agency, Inc.
 Grupo De Frigeracion Industrial y Comercial,
 S.A. de C.V.
 Harry Peck & Co.

Havana Pepsi-Cola Bottling Co.
 Helvetia Leasing Corporation
 Helvetia Milk Condensing Company, Inc.
 Helvetia Properties, Inc.
 Helvetia Redevelopment Corporation
 Hi-Q Products Company
 Hussmann Acceptance Co.
 Hussmann Acceptance Co. Canada Limited
 Hussmann Corporation
 Hussmann Distributing Company, Inc.
 Hussmann Equipment Limited
 Hussmann International Inc.
 Hussmann Refrigeration Ltd.
 Hussmann Store Equipment, Ltd.
 Huth Manufacturing Corporation
 IC Acquisition Company
 IC Equipment Leasing Inc.
 IC Equitus, Inc.
 IC Industries, Inc.
 IC Industries Finance Corporation, N.V.
 IC Industries Insurance Co. Ltd.
 IC Leasing, Inc.
 IC Products Company
 Iconic, Inc.
 ICP Holding Corp.
 Illinois Center Corporation
 Illinois Central Export Corporation
 Illinois Central Industries, Inc.
 Industrias Frigorificas, S.A. de C.V.
 International Parts Corporation
 International Parts Manufacturing, Ltd.
 International Stamping Company, Inc.
 J. H. Senior and Company Limited
 Jefferson SWRR Co.
 Joliet Union Depot Co.
 Kansas City Terminal Co.
 Ken-Craft Products, Inc.
 Kentuckiana Bottlers, Inc.
 Kolmer Products Corporation

Krack Corporation
 Krack Corporation International
 Lakes Entrance Processors Pty. Limited
 LaSalle Properties, Inc.
 Laura Scudder's, Inc.
 Le Silencieux, S. A.
 Lincoln Financial, Inc.
 Lloyds Abex Limited
 Lloyds (Burton) Ltd.
 Mayflower Products Limited
 Mexican Holding Co.
 Mid-America Improvement Corporation
 Midas Australia Pty. Ltd.
 Midas Automotive Ltd.
 Midas Canada, Inc.
 Midas Euro., Inc.
 Midas International Corporation
 Midas Muffler (Vic.) Pty., Limited
 Midas Properties, Inc.
 Midas Realty Corporation
 Midas Realty Corporation of Canada
 Midas S.A.
 Midas Silencers Centres U.K. Limited
 Midas Silencers Ltd.
 Midas Steel Processing Services, Inc.
 Midas Truck Body, Inc.
 Milady Foods, Inc.
 Missouri Specialty Spirits, Inc.
 Muffler Corporation of America
 905 Wine and Spirits, Inc.
 Norris Homes, Inc.
 North Carolina Corp.
 Oak Village Development Corp.
 Old Brazos Forge, Inc.
 1, 2, 3 Auto Service GmbH
 1, 2, 3 Auto Service GmbH & Co.
 Paducah & Illinois RR Co.
 Palmer Refrigeration Limited
 Parmaco Products, Ltd.

Peoria & Pekin Union Ry. Co.
 Pepsi-Cola General Bottlers, Inc.
 Pet Incorporated (Delaware)
 Pet Incorporated (Wyoming)
 Pet International Sales, Inc.
 Pet Milk Company
 Petrodyne S.A.
 Petsub, Inc.
 Pet Warehousing Company of California
 Port 400 Holding Company
 Potteries Exhaust Centre Limited
 Refrigeracion Frio Lux, S.A.I.
 Richardson & Robbins Co.
 S.A.A.teliers et Fonderies B. Piret
 S&T of Mississippi, Inc.
 S&T South, Inc.
 St. Louis Lithographing Company
 C. Shippam, Limited
 Siprof S.A.
 South Properties, Inc.
 Southland Canning & Packing Co., Inc.
 Spartanburg Dairy, Inc.
 Stanray Corporation
 Star Cooler Corporation
 Stephen F. Whitman & Son, Inc.
 Stuckey's, Inc.
 Stuckey's Stores, Inc.
 Sundaram-Abex Limited
 Terminal RR Assn.—St. Louis
 TI Midas Limited
 Trailer Train Co.
 Uni-Abex Alloy Products Limited
 Vendome Stores, Inc.
 Violet Packing Co., The
 Walsall Exhaust Centre Limited
 William Underwood Company
 Wine & Spirits Enterprises, Inc.
 Winebrenner Corporation, The
 Wolverhampton Exhaust Centre Limited

Norfolk and Western Railroad Company is a wholly owned subsidiary of Norfolk Southern Corporation. Its subsidiaries which are not wholly owned are:

The Akron and Barberton Belt Railway Company
 The Belt Railway Company of Chicago
 Chicago and Western Indiana Railroad Company
 The Cleveland Union Terminals Company
 Deroco, Inc.
 Des Moines Union Railway Company
 Fairport, Painesville and Eastern Railway Company
 Fort Wayne Union Railway Company
 Fruit Growers Express Company
 Green Real Estate Company
 Iowa Transfer Railway Company
 Kansas City Terminal Railway Company
 Keokuk Union Depot Company
 Norfolk and Portsmouth Belt Line Railroad Company
 Peoria and Pekin Union Railway Company
 Piedmont Aviation, Inc.
 Pittsburgh & Cross Creek Railroad Company
 Terminal Railroad Association of St. Louis
 The Toledo Terminal Railroad Company
 Trailer Train Company
 Union Belt of Detroit
 Wabash Railroad Company
 The Wheeling and Lake Erie Railway Company
 Winston-Salem Southbound Railway Company

Its affiliates are:

Airforce Pipeline, Inc.
 The Alabama Great Southern Railroad Company
 Algers, Winslow and Western Railway Company
 Arrowood-Southern Company
 Arrowood Southern Executive Park, Inc.
 The Atlanta and Charlotte Air Line Railway Company
 Atlanta Terminal Company
 Atlantic and East Carolina Railway Company
 Atlantic and North Carolina Railroad Company
 Augusta and Summerville Railroad Company

Beaver Street Tower Company
 Birmingham Terminal Company
 Blue Ridge Railway Company
 Camp Lejeune Railroad Company
 Carolina and Northwestern Railway Company
 Central of Georgia Railroad Company
 Central Transfer Railway and Storage Company
 Charlotte-Southern Corporation
 Chatham Terminal Company
 Chattanooga Station Company
 Chattanooga Terininal Railway Company
 The Cincinnati, New Orleans and Texas Pacific
 Railway Company
 Cincinnati Southern Railway
 Citico Realty Company
 Danville and Western Railway Company
 Durham and South Carolina Railroad Company
 Elberton Southern Railway Company
 1575 Eye Street Associates (Limited Partnership)
 The Georgia Midland Railway Company
 The Georgia Northern Railway Company
 Georgia Southern and Florida Railway Company
 High Point, Randleman, Asheboro and Southern
 Railroad Company
 Interstate Railroad Company
 Lambert's Point Barge Company, Inc.
 Lenoir Car Works
 Live Oak, Perry and South Georgia Railway Company
 Louisiana Southern Railway Company
 Memphis and Charleston Railway Company
 Mobile and Birmingham Railroad Company
 NS Transportation Brokerage Corporation
 The National Investment Company
 New Orleans Terminal Company
 Norfolk and Portsmouth Belt Line Railroad Company
 Norfolk Southern Foundation
 Norfolk Southern Industrial Development Corp.
 Norfolk Southern Marine Services, Inc.
 The North Carolina Midland Railroad Company
 The North Carolina Railroad Company

North Charleston Terminal Company
 Ocean Steamship Company of Savannah
 Pine Brook Center Limited (Limited Partnership)
 Queen City Developers (Limited Partnership)
 Richmond, Fredericksburg and Potomac Railroad
 Company
 Richmond-Washington Company
 St. Johns River Terminal Company
 700 North Fairfax Street Limited Partnership
 The South Western Rail Road Company
 Southern Rail Terminals, Inc.
 Southern Rail Terminals of Alabama, Inc.
 Southern Rail Terminals of North Carolina, Inc.
 Southern Railway Company
 Southern Railway-Carolina Division
 Southern Region Coal Transport, Inc.
 Southern Region Industrial Realty, Inc.
 Southern Region Materials Supply, Inc.
 Southern Region Motor Transport, Inc.
 State University Railroad Company
 Tennessee, Alabama & Georgia Railway Company
 Tennessee Railway Company
 Terminal Properties, Inc.
 Terminal Railroad Association of St. Louis
 Trailer Train Company
 Transylvania Railroad Company
 Virginia and Southwestern Railway Company
 Woodstock & Blocton Railway Company
 Yadkin Railroad Company

Chicago, Milwaukee, St. Paul and Pacific Railroad Company is a wholly owned subsidiary of Chicago Milwaukee Corporation. Its subsidiaries which are not wholly owned are:

Chicago, Terre Haute and Southeastern
 Railway Company
 Chicago Union Station Company
 Davenport Rock Island and North Western
 Railway Company

Des Moines Union Railway Company
 Indiana Harbor Belt Railroad Company
 Kansas City Terminal Railway Company
 Longview Switching Company
 The Minnesota Transfer Railway Company
 National Railroad Passenger Corporation
 Northern Tier Pipeline Company
 Trailer Train Company

Its affiliates are:

Aslesen Company
 Hansen Porcelain
 Hi-Way Paving Company, Inc.
 Southern Boiler Tank Works, Incorporated
 Vulcan Hart Corporation

The Union Pacific Railroad Company is the wholly owned subsidiary of Pacific Rail Systems, Inc. which in turn is the wholly owned subsidiary of Union Pacific Corporation. Its subsidiaries (except wholly owned) and affiliates are:

Bear Creek Uranium Company
 Black Butte Coal Company
 Camas Prairie Railroad Company
 Carbon County Coal Company
 Corpus Christi Petrochemical Company
 The Denver Union Terminal Railway Company
 Esperanza Pipeline Company
 Ferguson-Burleson County Gas Gathering System
 Frontier Pipeline
 Jefferson Southwestern Railroad Company
 Kansas City Terminal Railway Company
 Longview Switching Company
 M-C Carbon Partnership
 Medicine Bow Coal Company
 Missouri Pacific Railroad Company
 The Ogden Union Railway and Depot Company
 Portland Traction Company
 Portland Terminal Railroad Company

The St. Joseph and Grand Island Railway Company
Southern Illinois and Missouri Bridge Company
St. Joseph Terminal Railroad Company
Stansbury Coal Company
Stauffer Chemical Company of Wyoming
Trailer Train Company
Unita Development Company
Union Pacific Resources Ltd.
The Weatherford Mineral Wells and Northwestern
Railway Company